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UNREDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED

28 *Attorneys for Defendant:*
Otto Trucking LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANT OTTO TRUCKING LLC'S
SUR-REPLY IN SUPPORT OF ITS
OPPOSITION TO WAYMO LLC'S
MOTION FOR SANCTIONS
[DKT. NO. 1910]**

Courtroom: 8 (19th Floor)
Judge: Hon. William Alsup
Trial Date: December 4, 2017

1 This Sur-Reply addresses Waymo's Reply concerning Otto Trucking's ("OT") assertions
 2 regarding the declarations Waymo submitted in support of OT's redacted version of Exhibit 10.
 3 Nothing in Waymo's Reply changes the lack of merit of Waymo's motion for sanctions. OT's
 4 filings were made in good faith and sought to keep items confidential in accordance with this Court's
 5 Orders. OT also made no untrue statements in its Opposition. The motion for sanctions should be
 6 denied.

7 Waymo makes the incorrect claim that OT misrepresented Waymo's position on sealing. OT
 8 did not. OT's Opposition states: "Waymo filed multiple declarations in support of sealing the
 9 version of Exhibit 10 that it now complains is improper. ***To repeat: Waymo filed multiple***
 10 ***declarations affirmatively supporting the sealing of the version of Exhibit 10 that publicly***
 11 ***disclosed the domain name for the SVN server.***" Opp. at 1:9-10 (emphasis in original). This
 12 assertion is consistent with Waymo's own words. For example, Waymo's declaration in support of
 13 OT's September 13 sealing motion states as follows:

14 **I make this declaration in support of Defendant Otto Trucking's**
 15 **Administrative Motion to File Under Seal Portions of Defendants'**
 16 **Motion in Limine No. 26 (the "Administrative Motion"). The**
 17 **Administrative Motion seeks an order sealing highlighted portions of**
 18 **Defendants' Motion in Limine No. 26 ("Defendants' Motion") and of**
 19 **Exhibits 1 and 3 to the Vu Declaration, as well as the entirety of**
 20 **Exhibits 2, 4-10 thereto.**

21 Dkt. No. 1659, ¶¶ 1, 2 (emphases added). Exhibit 1 to the Vu Declaration was OT's version of
 22 Exhibit 10, without the domain redacted. OT's Administrative Motion, to which the declaration
 23 refers, sought to have Exhibit 10 filed that way. Waymo made virtually identical statements in three
 24 additional declarations in support of OT's sealing motions. *See* Dkt. No. 1698, Dkt. No. 1718, and
 25 Dkt. No. 1719. Waymo's argument lacks merit due to the sworn statements submitted by Waymo
 26 attorneys. OT also provided the Court with the full citation to the docket entries (which included the
 27 exhibits), as well as the quotes, so that the Court could fully assess the evidence. Waymo's
 28 suggestion that OT was trying to hide something is false.

Further, OT's Opposition disclosed that Waymo discussed the SVN domain name in its
 filings, quoted the filings and cited to the docket entries. As stated in the Opposition:

1 Waymo's prior sealing declarations repeatedly declared in boilerplate
 2 language that certain exhibits contain "highly sensitive information,"
 3 containing "domains that host Waymo's highly confidential SVN
 4 repository and other computer systems," where public access would
 5 "give bad actors seeking to hack Waymo's databases a target to
 6 attack." *See e.g.*, Dkt. No. 1659 ¶ 5; Dkt. No. 1698 ¶ 5; Dkt. No. 1718
 7 ¶ 5; Dkt. No. 1719 ¶ 5.

8 Dkt. 1955-4 (Opposition brief) at 8:10-14; *see also id.* at 8:14-24.

9 Waymo's new argument is that Waymo highlighted "██████████" in attachments to its
 10 declarations. Waymo appears to be arguing that the quoted sentence refers to an exhibit attached to
 11 its own declarations, even though the declarations refer to OT's Administrative Motion and exhibit.
 12 Nowhere in the declarations did Waymo indicate that there was a conflict in the exhibits or that OT's
 13 version needed to be changed. Indeed, Waymo's exhibit is non-compliant with the Court's Order
 14 (Dkt. 1444), which denied the sealing motion, "except for the email addresses, the technical
 15 information on the first and sixth pages. . . and the IP address on the third page." Waymo, for
 16 example, redacted non-technical information on the 3rd and 4th page. *See, e.g.*, Dkt. 1659. If
 17 Waymo truly had an issue with the discrepancy, it should have immediately alerted OT and the
 18 Court, but it did not do so.

19 The lack of merit to Waymo's motion is further evidenced by Waymo's failure to try to re-
 20 designate the domain name to protect it. Waymo did not, and *still has not*, designated the
 21 disclosures of the domain name as confidential. Since OT first re-filed the public version of Exhibit
 22 10, Waymo's counsel repeatedly complained about other parties' inadvertent public filings (quickly
 23 remedied), to the point that counsel demanded that Uber provide it with a filing protocol.
 24 Declaration of Todd A. Boock, Exs. 1-3. Despite Waymo's apparent focus on this issue, it did not
 25 object to Exhibit 10 in the Notice of Refiling, nor any other time it was subsequently filed (nor has
 26 Waymo designated the recent Zbrozek and Brown deposition transcripts). Waymo allowed filings of
 27 the now-disputed Exhibit 10 repeatedly over many weeks without a peep.

28 If Waymo *truly* wanted the domain name sealed, it had a few options: (1) timely designate;
 29 (2) style the current motion to have the court reconsider its prior sealing orders; or (3) attempt to
 30 designate the domain name as soon as it learned of the issue. Waymo has done none of the above.
 31 Waymo's Motion has no merit and it should be DENIED.

1 Dated: October 6, 2017

Respectfully submitted,

2 By: /s/ Neel Chatterjee _____

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **October 6, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service of the publicly filed documents will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on
October 6, 2017.

/s/ *Neel Chatterjee*
NEEL CHATTERJEE